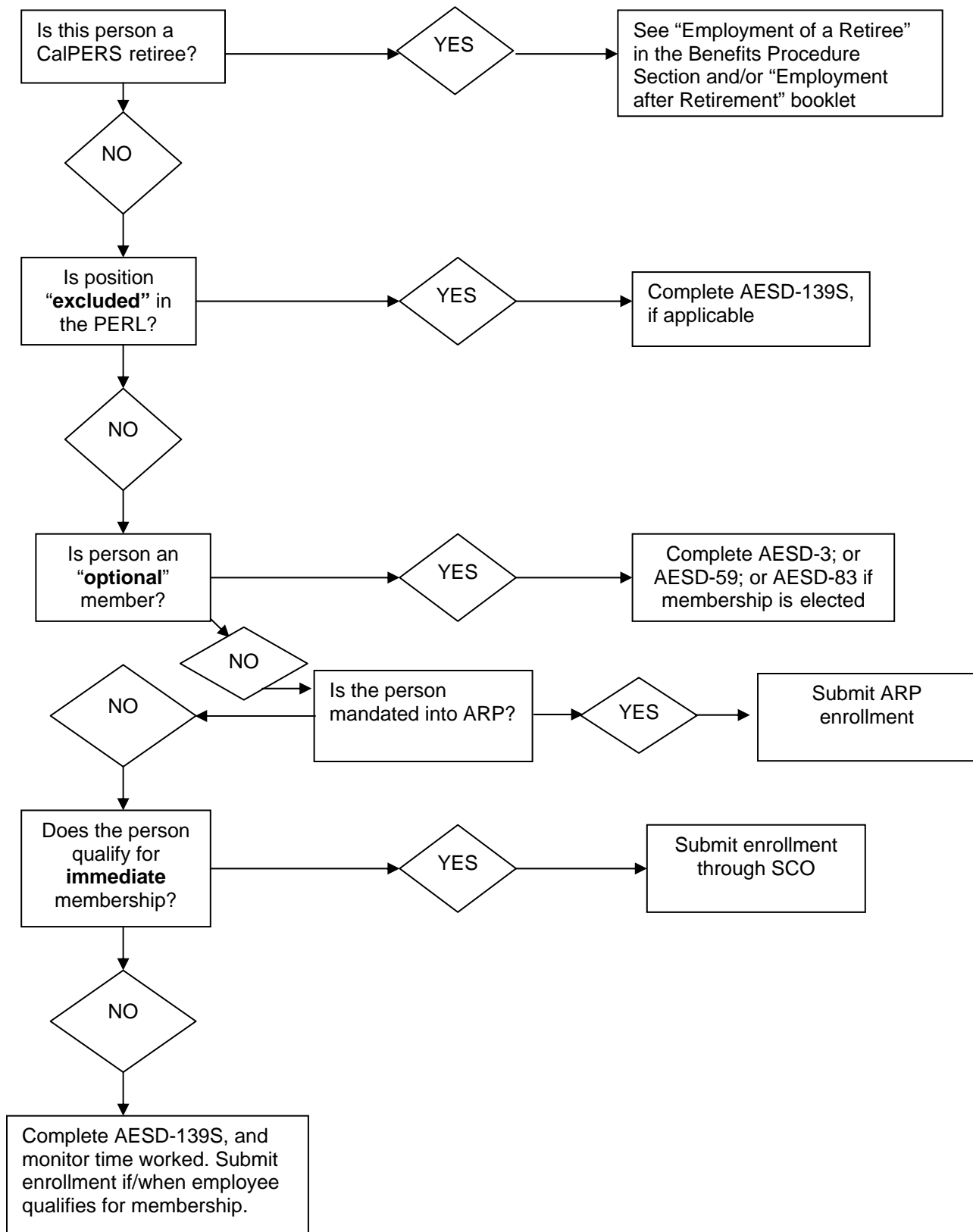


## DETERMINING MEMBERSHIP ELIGIBILITY



## POSITIONS EXCLUDED BY RETIREMENT LAW (PERL) FROM CALPERS COVERAGE

### EXCLUSIONS FROM MEMBERSHIP — GENERAL

#### A. Members of Other Retirement Systems

Persons who are receiving service credit in another public retirement system (federal, state, county, city, or other local) are excluded from receiving credit with CalPERS for that same service by G.C. section 20303.

**NOTE:** Persons **can** have dual membership in two or more public retirement systems, as long as it is for **different service**.

EXCEPTION: G.C. section 20303(b)(4) provides that persons participating in a “supplemental defined benefits plan” that has received a ruling from IRS that the plan qualifies under Section 401(a) of the Internal Revenue Code, where the plan provisions state that CalPERS is the primary plan for these employers, and plan participation will not in any way interfere with CalPERS benefits, are **not** prohibited from such dual participation.

#### B. Health and Welfare or Trade Rate Employment

Employees hired in Skilled Trades classifications are excluded from CalPERS if payments are made to the Health & Welfare Fund of the Union. (Use Account Codes NA or NH, depending on whether the employee has Medicare coverage.) If the employee is not entitled to have payments made to Health & Welfare fund, then you would use normal CalPERS eligibility rules for determining membership.

#### C. Independent Contractors

Independent contractors are not “employees” and are excluded from membership in CalPERS by G.C. section 20300(b). An Independent contractor is someone who contracts to do a piece of work according to his/her own methods, and is subject to his/her employer’s control only as to the **end product or final result** of work, and not as to the means and manner in which the work is performed.

CalPERS uses the “Common Law Control Test” extracted from the **State Social Security Administrators’ Handbook**, as a guide to determining employee/contractor status.

#### D. Elected or Appointed Officers

G.C. sections 20320–20325 exclude certain public officers and employees from membership unless an election is filed with CalPERS to waive the exclusion and establish membership.

Those persons qualifying for “optional” membership rights are predominately, but not limited to, elected and appointed officers of public agencies, schools, and the State of California. Refer to the “Optional Members of CalPERS” section for more complete information to determine who is excluded but eligible under optional member provisions.

#### E. Student Aides in the Special Schools of the State Department of Education

Persons who are students, as well as employed, at one of the special State schools for the blind, deaf, and neurologically handicapped individuals are excluded from membership in such positions.

#### F. California Conservation Corps Participants

Participants, other than staff officers and employees, are excluded from membership.

#### G. Assembly Fellows, Senate Fellows, and Executive Fellows

Program employees are excluded. For CSU employees **only**, this is Class Code 2944. Once the employee becomes a member, this time may be purchased as Service Prior to Membership.

#### H. Inmates of State Institutions

(i.e., prison/penitentiary or mental hospital) Such persons are excluded from CalPERS membership by G.C. section 20300(a) even if receiving compensation for such services they perform.

**EXCLUSIONS APPLICABLE ONLY TO  
CALIFORNIA STATE UNIVERSITY**

**Student Assistants**

Indicated by the following class codes:

0100	Youth Summer Aid
1150	Instructional Student Assistant
1151	Instructional Student Assistant, On-Campus Work Study
1868	Student Assistant — Non Resident
1869	Resident Assistant
1870	Student Assistant
1871	Student Trainee, Work Study on Campus
1872	Student Trainee, Work Study off Campus
1874	Bridge Student Assistant
1875	Bridge Student Trainee, On-Campus Work Study
1876	Bridge Student Trainee, Off-Campus Work Study
2325	Graduate Assistant, Monthly
2326	Graduate Assistant, On-Campus Work Study
2355	Graduate Assistant

**Extension Service**

Where compensation is established on the basis of class enrollment; these are indicated by the following class codes:

2322	Instructional Faculty, Special Programs
2323	Instructional Faculty, Extension — For Credit
2362	Demonstration Instructional Faculty
2363	Instructional Faculty, Extension — For Non-Credit
2365	Instructional Faculty, Music Studio

**Summer Session/Interession**

Employment in the following class codes are excluded from CalPERS since employment is typically in addition to other full time employment. However, if employment in the other class is less than full time, then the following class codes are reportable to CalPERS.

2357	Instructional Faculty, Summer Session
2368	Instructional Faculty, Extra Quarter Assignment, QSYRO
2390	Instructional Faculty, Summer Quarter Assignment
2394	Instructional Faculty, Executive Committee, Academic Senate
2395	Instructional Faculty, Chairman, Academic Senate
2402	Instructional Faculty, Summer Arts Program

**EXCLUSIONS APPLICABLE ONLY TO  
UNIVERSITY OF CALIFORNIA**

**Employees Hired after October 1, 1963**

Persons are excluded and are now subject to the University of California Retirement Plan (UCRP), rather than CalPERS.

**Extension Service**

Where compensation is established on the basis of class.

**Summer Session/Interession**

Teachers or academic employees, who are otherwise fully employed, are excluded.

## “OPTIONAL” MEMBERS OF CALPERS

The Government Code provides “optional” membership rights for certain public officers and employees. Those eligible “optional” members are excluded unless **an election** for membership is filed with CalPERS.

If membership is elected and established:

1. Other than the choice whether or not to elect retirement coverage, “optional” members are subject to the standard CalPERS laws and regulations that apply to non-optional members.
2. There is no Government Code provision to opt out of membership prior to separation from employment. Once elected, the membership must be continued for all future consecutive “optional” member positions with the same employer as long as the future positions are not excluded by law or contract.

### “OPTIONAL” MEMBERS

There are four classes of State employees that are eligible for “Optional” membership:

1. **State Officers Elected by the People —**  
The Governor, Lieutenant Governor, Secretary of State, Controller, Treasurer, Attorney General or Insurance Commissioner may elect membership by filing the AESD-59 form.  
(G.C. section 20322)
2. **Appointees of State Officers —**  
May elect membership by filing the AESD-83 form.  
(G.C. section 20320)

These include:

- a) Persons directly appointed by the Governor, without nomination of any officer or board. Normal membership eligibility must be met.

- b) Persons exempt from Civil Service, and directly appointed by the:
  - Attorney General
  - Lieutenant Governor
  - Controller
  - Secretary of State
  - Treasurer
  - Superintendent of Public Instruction (except for teaching staff of schools)
- c) Members of the Board of Prison Terms, the State Personnel Board, or the State Air Resources Board.  
(G.C. section 20305(a)(5))
3. **Officers of the Senate or Assembly —**  
elected by either or both such houses; may elect membership by filing the AESD-59 form.  
(G.C. section 20322(b))
4. **Legislative Employees —** Employees of the Senate or the Assembly whose salaries are paid from the operating funds of the Senate or the Assembly may elect membership by filing the AESD-3 form.  
(G.C. section 20324)

**NOTE:** Legislative Employers should use the *Public Agency Procedures Manual* for most of their questions, since they are not covered by the Uniform State Payroll System (USPS).

### GENERAL PROVISIONS/INSTRUCTIONS

- “Optional” membership should not be established unless the eligible person signs an election to join CalPERS.
- Membership may be elected at any time while in an eligible position. However, membership is established on a prospective basis, usually with the effective date matching the first day of the pay period starting after the election for membership is signed.

- The position must be compensated other than just reimbursement of expenses.
- Any person concurrently employed in a position also covered by or potentially covered by CalPERS should first contact CalPERS to determine the impact should "optional" membership be elected.
- Any person concurrently employed in a position reportable to a private benefit plan or another retirement system should first contact that organization to determine if CalPERS membership will impact their benefits.
- A person appointed to an unexpired elected term of office has the same optional membership rights as if elected in his/her own right.
- Once "optional" membership is elected, it must be continued for all future consecutive "optional" member positions with the same employer, which are not excluded by law or contract. A member cannot receive a refund or retire from CalPERS while continuing to hold an optional position for which the membership was established.  
There is no provision to opt out of CalPERS membership while remaining in the position, even if compensation is waived.
- **Legislative staff employees:**  
Though "optional" member status is provided by Government Code section 20324, membership cannot be established unless the employee is working qualifying time, based on the same criteria as applied to "non-optional" members. Service credit is reported according to actual time worked.

#### PAST "OPTIONAL" MEMBERSHIP SERVICE CREDIT

- An "optional" member may elect to contribute and receive service for previous qualifying employment. Such election would not change the membership date back to the beginning date of the service purchased.
- A **"legislative staff employee"** (G.C. section 20324) shall have the option as to how much of his/her previous legislative service is to be credited.
- A person who is no longer in the "optional" member position, but is currently an active or inactive CalPERS member, may also elect to contribute for previous qualifying "optional" employment.
- See the booklet "Guide to Your Service Credit Options" for further instructions on submitting an additional service credit inquiry. Do not attach the inquiry to the AESD-3, the AESD-59 or the AESD-83; it should be submitted separately to the address provided on the form.

## ELECTION OF OPTIONAL MEMBERSHIP (AESD-3, AESD-59, OR AESD-83)

### PURPOSE

A completed and signed “Election of Optional Membership” form AESD-3; AESD-59 or AESD-83 is required to validate and establish membership for an individual who qualifies as an “optional” member (G.C. sections 20324, 20322 or 20320). The form must be submitted to CalPERS at the same time the employee enrollment is sent to the State Controller’s Office in order to satisfy the legal requirements. The forms may be downloaded from the CalPERS Web site.

**REFER TO THE “OPTIONAL” MEMBERS OF CalPERS” SECTION TO DETERMINE “OPTIONAL” MEMBERSHIP ELIGIBILITY AND TO CLARIFY WHICH FORM TO USE.**

### WHEN TO COMPLETE

The AESD-3, AESD-59 or AESD-83 (“election form”) should be completed only after it is determined that the individual does qualify for and requests “optional” membership.

1. The “optional” member must be advised of CalPERS rights when first eligible for membership but the election can be made at any time during the qualifying employment. Document in employer personnel records that the information was provided as well as any response received. Do not send a notice to CalPERS if membership is declined.
2. The “election form” *should not be completed* as a request for additional information or service credit. It is to be used only when the person has decided to establish membership for the optional position.
3. The signed “election form” must be filed with CalPERS.
4. Complete the appropriate “election form” and membership transaction when a current active or inactive member assumes an “optional” member position and wishes membership for that office.

### OTHER GENERAL PROVISIONS AND INSTRUCTIONS

1. For CalPERS retirement purposes, “optional” members qualifying under G.C. section 20322 are considered to be full-time employees. Exclusions listed under G.C. 20899 (such as temporary, part-time, daily-paid, etc.), do not apply.
  2. The “optional” member must receive compensation for membership to be established. Reimbursement of expenses is not considered compensation. Elimination or waiver of such compensation at a future date does not constitute a separation from membership as long as the person remains in an optional position with the employer.
  3. Membership should not be established for an “optional” member unless the “election form” is signed and filed with the CalPERS Board of Administration in accordance with the “When to Complete” instructions.
  4. Use a prospective membership effective date, usually the beginning date of next pay period so that it matches the effective date of contribution reporting to CalPERS. The membership date must be during the current term of appointment.
  5. Submit the original signed “election form” to CalPERS; retain copies for the member and employer personnel records.
- An “optional” member may elect to contribute and receive service for previous qualifying employment. A request to purchase this service credit can be made with the publication titled “A Guide to Your Service Credit Options” (PUB 12).

An officer or employee who is no longer in an “optional” position, but is currently an active or inactive CalPERS member, may also elect to contribute for previous qualifying “optional” employment. A request to purchase this service credit can be made with the publication titled “A Guide to Your Service Credit Options” (PUB 12).



## CALPERS MEMBERSHIP ELIGIBILITY

Persons who are **current** members of CalPERS do not need to “re-qualify” for membership. This applies **even** if membership was established through employment with another CalPERS agency or if they are not currently working and are on “inactive” status with CalPERS. If a person has funds on deposit or service credit with CalPERS, he/she is a current member.

### Exception:

State Second-Tier members who are not vested and have been permanently separated for more than 6 months. Most other employees should enter CalPERS membership **immediately upon employment** (G.C. section 20281).

**NOTE:** Employees of the Department of Forestry and Fire Protection who qualify for State Peace Officer/Firefighter membership under G.C. Section 20392, or State Safety membership under Section 20400, also qualify for immediate membership, even if working less than full-time.

However, there are some employees who must work a certain number of hours/days (commonly referred to as “qualifying time”) before they are eligible for CalPERS membership, such as the following:

### FULL-TIME EMPLOYEES:

Persons in full-time employment whose appointment/employment does **not** fix a term of employment longer than six months should be monitored; if full-time employment actually continues for more than six months, membership is mandatory. The effective date is not later than the first day of the first pay period of the seventh month of employment.

### LESS THAN FULL-TIME EMPLOYEES:

For the majority of positions, CalPERS deems “full-time” employment to be **40 hours per week**; as defined by Section 20065, **any** amount of time worked less than this may be considered “less than full-time”. However, the most important and commonly used guideline to consider for less than full-time employees is **1000 hours or 125 days in a fiscal year**. (125 8-hour days equal 1000 hours) This standard is the equivalent of a 20-hour week for 50 weeks out of the year and is stated in Government Code section 20305(a)(3)(B).

### CALIFORNIA STATE UNIVERSITY TEMPORARY FACULTY:

Must work half time or more for either (1) two consecutive semesters, or (2) three consecutive quarters (G.C. section 20305(a)(4)).

The general principles to follow to determine when and if someone is eligible for membership, if not excluded by contract or by law, are as follows:

1. Persons who are **already** members of CalPERS are **not** excluded from membership because they are working less than full-time. (G.C. section 20305(a)(1))
2. Persons enter membership upon appointment to a position with one of the following conditions:
  - a. The appointment/employment fixes a term of **full-time, continuous** employment in excess of six months.
  - b. CSU Temporary Faculty employee appointed for **one academic year at full-time**.
  - c. The position requires **regular, part-time** service for at least an average of 20 hours per week (or its equivalent) for one year or longer.
3. Persons must otherwise be **monitored** to determine when and if they qualify for membership. Qualification for membership is reached when:
  - a. No term (length) of appointment is specified in the appointment/employment, but full-time employment continues longer than six months.
  - b. The person works more than 125 days in a fiscal year if paid on a “per diem” basis (i.e., “per day”). For this purpose, “day” means each 8 hours of compensated service; (e.g. a firefighter working a 24-hour shift is working 3 “days” per shift).
  - c. The person works 1,000 hours in a fiscal year if paid on other than a per diem basis. Any overtime hours worked are counted as qualifying time.

In such cases, membership becomes effective **no later than** the first day of the next pay period after (a) the sixth month of full-time employment or (b) completion of 1,000 hours of 125 days in a fiscal year.

When monitoring an employee for the 1,000 hours, **all hours** the employee is compensated for should be counted towards membership qualifications, even if the compensation would not be reportable to CalPERS if the person was a member.

For example, if an employee were called in to work 4 hours on July 4<sup>th</sup>, which is a paid 8-hour holiday for the individual, the employee would have 12 hours counted towards their membership qualification.

However, if this example applied to a **member**, then the 4 hours would be considered overtime and not reportable to CalPERS.

#### **FAILURE TO TIMELY ENROLL A MEMBER**

It is the employer's responsibility to determine if its employees are eligible to participate in CalPERS. If an employer has failed to enroll an eligible employee into CalPERS membership within 90 days of qualifying, when the employer knows or can reasonably be expected to have known of that eligibility, the employer shall be responsible for arrears of the member contributions and a \$500 administrative cost per member. Please note that the administrative cost "is not a fee or penalty" to the agency — rather, it is a reimbursement to CalPERS for costs associated with the process of administering G.C. section 20283.

#### **DETERMINING IF A PART-TIME SEASONAL EMPLOYEE IS ELIGIBLE FOR MEMBERSHIP**

1. Look for PIMS/CSUC transactions to check if a new employee is already a member of CalPERS. If employee is already a member of CalPERS, that employee should be immediately reported to CalPERS.
2. Look for account codes on an employee's records, which indicate that the employee has previously worked for a State agency or California State University.
3. Look at completed Employee Action Request (EAR), section G, to see if a State agency or California State University employed the employee.
4. Ask newly hired employees if they are a member of CalPERS and document it in writing. A Public Agency or County School could have formerly employed some members. Document on the AESD-139-S. See page 243 for a copy of this form.
5. Concurrent hours worked in multiple part-time positions must be summed.

#### **NOTICE OF EXCLUSION FROM CALPERS MEMBERSHIP**

For employees who do not qualify for CalPERS membership, the "Notice of Exclusion from CalPERS Membership" (PERS-AESD-139S) should be completed. The completed form should be given to the employee in order to inform them of the specific reason for their exclusion and to fulfill the employer's responsibility of notification. Do **NOT** send copies of this form to CalPERS; however, a copy should be retained for the employee's records.



## FIRST-TIER VS. SECOND-TIER

Is the miscellaneous or industrial employee a previous member of CalPERS (do they have service and/or funds on deposit from another contracting Public Agency, County School or State agency that is under CalPERS)?

NO — Refer to “CalPERS Membership Eligibility” in the “Civil Service/CSU Membership” section to determine when to bring the employee into membership. Once the employee qualifies for CalPERS membership, determine if the employee **contributes** to CalPERS or ARP. If it is determined the employee contributes to ARP, place them in the ARP account code. If the employee is eligible to contribute to CalPERS (either on appointment date or completion of the 24 months in ARP), place the employee into First-Tier and provide the employee with the “State Miscellaneous and Industrial Members Retirement Benefit Election Package” booklet (PERS-PUB-52).

YES — See chart below.

All First-Tier Service (Public Agency, County School or State)	Mixed Tier* Service	All State Second-Tier Service only (no State First-Tier, Public Agency or County School Service)			
		Permanent Separation is Less than 90 days	Permanent Separation is 91 days to Six Months	Permanent Separation is over Six Months and Member has less than 10 years of Second Tier Service	Permanent Separation is over Six Months and Member has over 10 years of Second Tier Service
<ul style="list-style-type: none"> <li>The employee is brought into CalPERS membership immediately.</li> <li>Place the employee into First-Tier.</li> <li>Provide the employee with the PUB-52.</li> </ul>	<ul style="list-style-type: none"> <li>The employee is brought into CalPERS membership immediately.</li> <li>If break in service is more than 90 days, place the employee into First-Tier.</li> <li>Provide the employee with the PUB-52.</li> <li>If break is less than 90 days, see 1, 2 or 3 below.</li> </ul>	<ul style="list-style-type: none"> <li>The employee is brought into CalPERS membership immediately.</li> <li>Place the employee into Second-Tier.</li> </ul>	<ul style="list-style-type: none"> <li>The employee is brought into CalPERS membership immediately.</li> <li>Place the employee into First-Tier.</li> <li>Provide the employee with the PUB-52.</li> </ul>	<ul style="list-style-type: none"> <li>The employee needs to re-qualify for CalPERS membership.</li> <li>Upon meeting CalPERS' membership qualifications, place the employee into CalPERS membership.</li> <li>Place the employee into First-Tier.</li> <li>Provide the employee with the PUB-52.</li> </ul>	<ul style="list-style-type: none"> <li>The employee is brought into CalPERS membership immediately.</li> <li>Place the employee into First Tier.</li> <li>Provide the employee with the PUB-52.</li> </ul>

\*Mixed Tier Service (break in service is less than 90 days):

1. If the member's last appointment was State Second-Tier, place the member in the State Second-Tier and do not provide the PUB-52.

### *First-Tier vs. Second-Tier*

2. If the member's last appointment was State Safety, POFF or CHP Patrol and the member has **elected** to convert their past State Second-Tier service to the First-Tier service, place the member into the State First-Tier and do not provide the PUB-52.
3. If the member's last appointment was State Safety, POFF or CHP Patrol and the member has **not elected** to convert their past State Second-Tier service to First-Tier service, place the member into the State Second-Tier and do not provide the PUB-52.

The member may contact the CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**) to receive the election material to elect into the State First-Tier for future and/or past State Second-Tier service.

## CALPERS OR CALSTRS?

Public school positions in California are divided into two basic types:

1. **CERTIFICATED:**

An employee in a position requiring certification qualifications by or pursuant to the Education Code. Credentialed employees (e.g., teachers, administrators, health care, library media workers) are all in certificated positions.

2. **CLASSIFIED:**

An employee in a non-certificated position (e.g., office workers, custodial staff, cafeteria workers).

In general terms, employees in certificated positions are, upon meeting normal qualification requirements, eligible for membership in the California State Teachers' Retirement System (CalSTRS), while classified employees may be eligible for membership in CalPERS.

Pursuant to Government Code sections 20300(g), 20501 and 20610, CalPERS can cover school employees only with respect to employment in which they are not eligible for CalSTRS coverage. Some persons who are **eligible** for membership in CalSTRS or CalPERS may not actually **qualify** for membership in either system (due to "part-time" or "temporary/seasonal" status, etc.); thus, some school employees may not be members of either system until their working hours or conditions change.

The Education Code (which contains the laws governing CalSTRS) contains two basic provisions, which may give persons certain rights with regard to choosing coverage under one system or the other:

**Education Code Section 22508(a):**

A person who is a CalSTRS member, who subsequently is employed by a school district, community college district or a county superintendent (or by the State in other certain cases; see "Inclusion" section below) in a position which requires CalPERS membership (i.e., a classified position), will enter CalPERS membership in the new position.

However, he or she may elect to remain a member of CalSTRS in the new position.

**Education Code Section 22508(c):**

A CalPERS member employed by a school district or a county superintendent, the State Department of Education, or the Board of Governors of the California Community Colleges, who then is employed in a position subject to coverage by CalSTRS (i.e., a certificated position), will enter CalSTRS membership in the new position. However, he or she may elect to remain a member of CalPERS in the new position.

### INCLUSION OF CERTAIN STATE EMPLOYEES

#### 1. Employees in Certain State Bargaining Groups

SB 1694 (Chapter 880, Statutes of 2000) amended Section 22508 of the Education Code, and now provides that this same election right will be given to CalSTRS members that enter State employment where one of the following conditions apply:

- A. The employee is represented by a State Bargaining Unit that represents educational consultants, professional educators, or librarians employed by the state; OR
- B. The employee is excluded from the definition of "State employee" in G.C. Section 3513(c), yet performs, manages or supervises work similar to employees under Subparagraph "A" above; OR
- C. The employee is in a non-civil service position in the Executive branch, yet performs, manages or supervises work similar to employees under Subparagraph "A" above.

SB 1694 (Chapter 880, Statutes of 2000) amended Section 20309 of the Government Code, and now provides that this same election right will be given to CalPERS members that enter employment that is subject to coverage by CalSTRS where the following conditions apply:

- A. The member is employed by the State Board of Governors of the Community Colleges or the State Department of Education;
- B. The employee obtains a position that requires employment with the county schools and community colleges after 9/11/2000.

SB 165 (Chapter 77, Statutes of 2001) again amended Government Code section 20309, which will also allow CalPERS members with five years of CalPERS credited service, who enter employment on or after 01/01/2002 that is subject to coverage by CalSTRS, the right to elect to remain in CalPERS. The five years of service accrued under CalPERS can be with the State of California, a Public Agency, a County School, or a combination thereof.

## **2. Persons Entering State Second-Tier Membership Between July 1, 1991 and September 11, 2000**

AB 649 (Chapter 402, Statutes of 2000) added Section 22508.6 to the Education Code and Section 20309.5 to the Government Code, and provides that a "vested" CalSTRS member who enters State employment subject to the Second-Tier benefit plan may elect to have this service subject to CalSTRS rather than CalPERS, under the following conditions:

- 1. The member must have entered State employment within 30 days of separation from CalSTRS-covered employment;
- 2. The member must have had no other intervening employment;
- 3. The change of employment occurred between July 1, 1991 and September 11, 2000;
- 4. The member must be subject to the State Second-Tier.

5. The member meets one of the following criteria:

- A. Is represented by a State Bargaining Unit that has agreed to an MOU making their represented employees subject to G.C. section 20309.5;
- B. Is excluded from the definition of "State employee" in G.C. section 3513(c), yet performs, manages or supervises work similar to employees under Subparagraph "A" above;
- C. Is in a non-civil service position in the Executive branch, yet performs, manages or supervises work similar to employees under Subparagraph "A" above.

These elections must be made in writing by completing the "Retirement System Election" (ES-372). This form can be obtained from the CalSTRS Web site [www.calstrs.com](http://www.calstrs.com). Send the completed form to CalSTRS and a copy to CalPERS. This form must be filed **within 60 days** of entry into the new position. The election filed must be signed and dated by **both** the employee and employer. It should also indicate the date the employee entered the new position.

Send elections to:

**CalSTRS**  
**P.O. Box 15275**  
**Sacramento, CA 95851-0275**

**Or**

**CalPERS**  
**Member Services Division/Unit 841**  
**P.O. Box 942704**  
**Sacramento, CA 94229-2704**

This right of election arises when the employee enters a position or has a major change in conditions of employment that requires membership in the other retirement system. If a person does not exercise the right of election **within 60 days** from their date of hire into the position, they will be reported to the new retirement system. Once a person **does** exercise this right of election, they will be reported to the elected retirement system from the date of hire. This election is **irrevocable** and will remain in effect until a change in employment occurs that qualifies the employee for the election right **or** until the person separates from employment and receives a refund of all accumulated contributions and interest.

**Note:** The definition of a change in employment or position is subject to determination by CalSTRS.

Should the employee return to employment and upon qualification, the employee would become a member of the retirement system that they qualify for in that position. Use the chart following this section as a guide to determine the retirement system coverage for the employee. The **Education Code** (which governs CalSTRS), not the **Government Code** (which governs CalPERS), contains the laws regulating this election of coverage. The final decision in any questionable situation (e.g., acceptance of "late" elections) must be made by CalSTRS, not CalPERS.

## DIFFERENCES BETWEEN CALPERS AND CALSTRS

There are a number of factors that might influence a person's decision about coverage under one system or the other. Some of the differences between the two systems are the following:

1. CalPERS members may or may not have Social Security coverage (most do), whereas CalSTRS members generally do not;
2. The Benefit Factors based on age for service retirement may be different;
3. The employee contribution rates may be different;
4. Persons entering membership in either system between July 1, 1980 and December 31, 1998 may not be eligible to convert unused sick leave credits to service credit at retirement.

We suggest you contact CalSTRS or the Member Services Division at CalPERS if you have any specific questions or need additional information relating to an employee's choice of coverage.

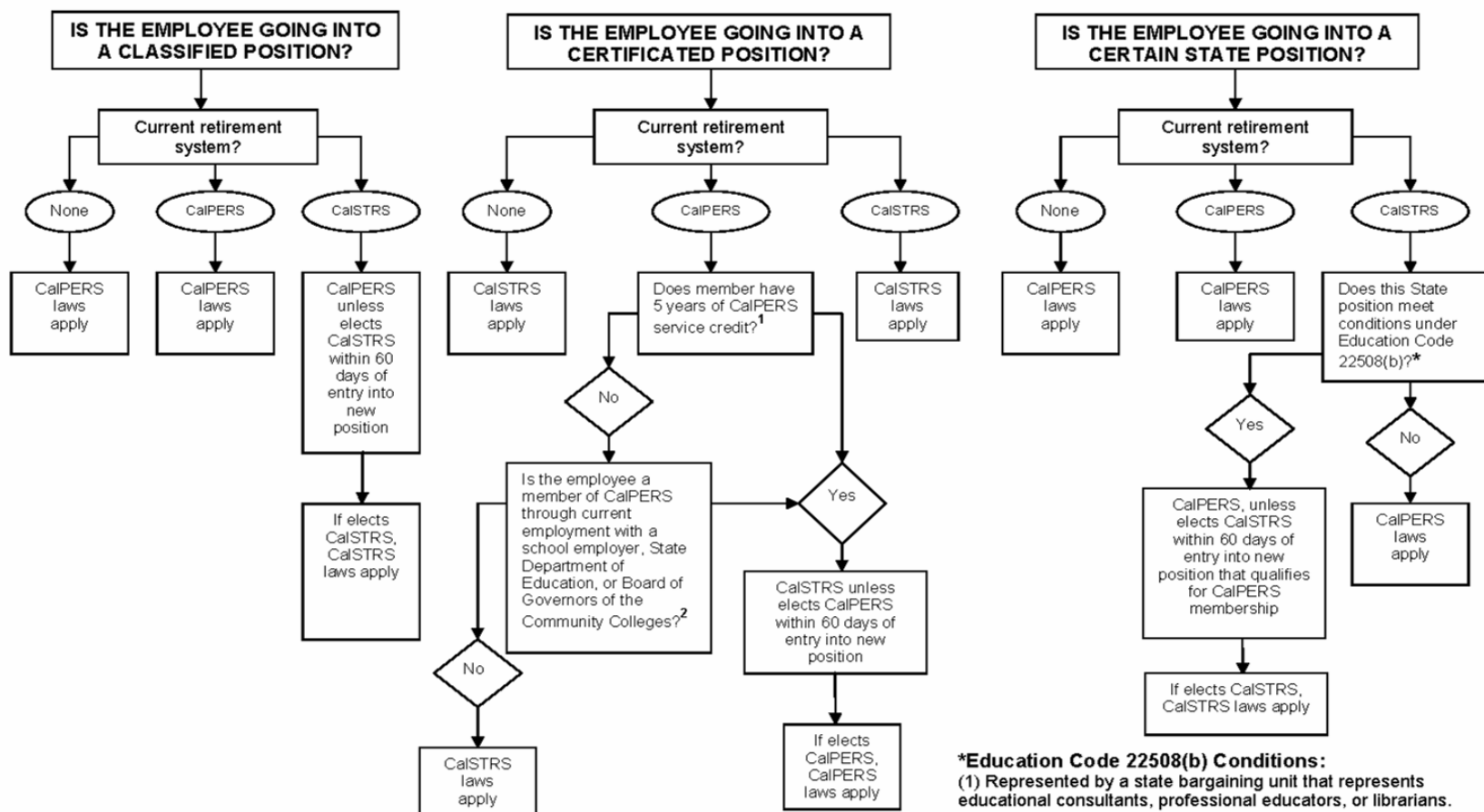
A CalPERS/CalSTRS FAQ is available on [www.calpers.ca.gov](http://www.calpers.ca.gov). You can also receive the publication "Join CalSTRS? Join CalPERS?" at [www.calstrs.com](http://www.calstrs.com) or by calling CalSTRS.

CalSTRS (800) 228-5453 or (916) 229-3870  
TDD (916) 229-3541  
[www.calstrs.com](http://www.calstrs.com)  
Membership Division (916) 229-3806

## ADDITIONAL INFORMATION

1. A person is a "member" of CalPERS or CalSTRS unless they have permanently separated from all employment covered by the system **and** received a refund of his or her contributions and interest on deposit.
2. It **is** possible to be an active (i.e., currently employed) member of **both** CalSTRS and CalPERS as long as this dual coverage is for different positions.
3. The right of election arises for a CalPERS member through school employment, Board of Governors, and the State Department of Education. If a person has CalPERS membership through some other type of employer (most State or contracting Public agencies), the right of election of coverage to remain a CalPERS member arises only if the member has attained 5 years of service and changes positions on or after January 1, 2002.
4. The right of election arises **after** one has been hired in a position that would be covered by the other retirement system.
5. The election should be filed with the system indicated by the Education Code section (see previous page); send a duplicate copy to the other system for informational purposes, clearly labeled "COPY."

## CalPERS/CalSTRS RETIREMENT SYSTEM ELECTION



1 Government Code Section 20309 (Chap. 77, Stats. 2001) effective 1-1-2002

2 Government Code Section 20309 (Chap. 880, Stats. 2000) effective 1-1-2001

### \*Education Code 22508(b) Conditions:

- (1) Represented by a state bargaining unit that represents educational consultants, professional educators, or librarians.
- (2) Excluded from the definition of "state employee" in subdivision (c) of Section 3513 of the Government Code, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).
- (3) In a position not covered by civil service and in the executive branch of government, but performing, supervising, or managing work similar to work performed by employees described in paragraph (1).



## OVERTIME POSITIONS

Overtime may not be reported in membership to CalPERS, either as compensation or as employment, that will result in service credit being given. G.C. section 20635 defines "overtime" as follows:

"The aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid."

Some relevant situations that may arise are as follows:

1. The member currently holds one full-time position subject to CalPERS, and accepts a second concurrent part-time position.  
**RESULT:** The part-time position is deemed to be "overtime," and may not be reported to CalPERS.
2. The member holds more than one part-time position with the same CalPERS covered employer. **RESULT:** The part-time positions cannot, when added together, generate more than full-time service and/or contributions to CalPERS. In most cases, CalPERS considers 40 hours a week to be the standard full-time time base.
3. The member works more than one full-time position, either with the same employer (e.g., a school district) or with more than one CalPERS covered employer. **RESULT:** A determination must be made by CalPERS and/or the member as to which employer will be reported to CalPERS as the "basic employer."

Pursuant to changes made to G.C. 20635 by Senate Bill 53, Chapter 1297, Statutes of 1993, the treatment of **more than one full-time position** has been changed; the crucial distinction now is whether the service in question was worked **before** or **after July 1, 1994**:

**BEFORE JULY 1, 1994:** The member has the right to elect which of the two full-time positions will be reported to CalPERS; CalPERS will, upon discovery of the second full-time position, send the member an election allowing this choice to be made. If no election is made (i.e., if the member does not respond to CalPERS' notification of election rights), the employment with the latest hire date will be deemed the non-reportable "overtime" position.

**AFTER JULY 1, 1994:** The position with the highest pay rate or base pay should be reported to CalPERS, with the other position deemed the non-reportable "overtime" position.

If the service began **before** July 1, 1994 and continues **after** July 1, 1994, the member will have the election rights indicated above **only** for the service before July 1, 1994. Service after July 1, 1994 will require the position with the highest payrate to be reported to CalPERS.

**NOTE:** Check with your employee to see if they are currently employed at another CalPERS agency. If unsure, contact the Employer Services Division for verification.

## BIRTH DATE DISCREPANCY PERS-MEM-12

### PURPOSE

The PERS-MEM-12 is used to certify the correct member's birth date. However, CalPERS may contact you by phone instead of sending the MEM-12.

### WHEN TO COMPLETE

This form will be sent to your agency if CalPERS discovers a birth date discrepancy. Whether CalPERS or your agency discovers the discrepancy, please process as follows.

### INSTRUCTIONS

#### ACTIVE MEMBER

- If this is the **first time** to correct the birth date, process the change by an Employee Action Request (EAR) form.
- If a birth date correction has been previously requested, please notify CalPERS in writing and include one of the "Acceptable Documents" listed below with the request.

#### INACTIVE MEMBER

- If the member has separated and finds he or she has provided a birth date that is incorrect, CalPERS will request the member to provide one of the "Acceptable Documents" listed below.

#### Acceptable Documents

The following is the list of acceptable documents, listed in the order of preference, to be used in resolving a birth date discrepancy. The document submitted must not be altered. It will be returned after the correct birth date has been established in our records.

1. *BIRTH CERTIFICATE* or *HOSPITAL BIRTH RECORD* established during the first few years of life. We can furnish the address of the State's Bureau of Vital Statistics.
2. *CALIFORNIA DRIVERS LICENSE*
3. *NATURALIZATION/PASSPORT* (U.S. or Canada).
4. *FOREIGN PASSPORT* that includes a valid INS-94 form (record of arrival and departure).

5. *BORDER CROSSING CARD* with a valid INS-94 form (includes "Mica" and "Laser Visa" border crossing cards).
6. *CHURCH BAPTISMAL, CRADLE or BLESSING RECORD* that shows a date of birth and was established during the first few years of life.
7. *PRIMARY or SECONDARY SCHOOL RECORDS* showing age at certain year or birth date. Write to the Superintendent of Schools to request records.
8. *NATURALIZATION, PASSPORT or IMMIGRATION DOCUMENTS*
9. *RECORDS OF AGE OR BIRTH DATE* which are dated prior to 21st birthday, such as church, fraternal order, insurance, hospital, medical, adoption, guardianship, or newspaper notice of age.
10. *DELAYED BIRTH CERTIFICATE*. If you tell us the name of the state in which the member was born, we can furnish the address of the State's Bureau of Vital Statistics.
11. *CENSUS RECORDS* from federal or state government—preferably first two taken after date of birth. Federal records can be requested on form BC-600. This form will be furnished upon request.
12. *FAMILY BIBLE* in which birth date was recorded within reasonable period of time after birth.
13. *SOCIAL SECURITY CERTIFICATION* documents which show the date of birth that has been established by the Social Security Administration (contact the Social Security Office where you applied for Social Security benefits).

In the event that none of the above listed documents are available, contact the Employer Services Division in writing.